# DBE/ACDBE Monitoring & Enforcement

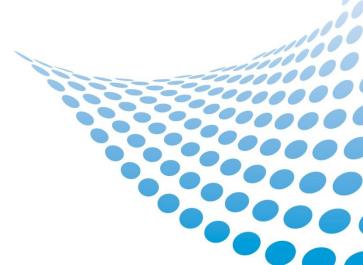
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Office Of Civil Rights

ACHIEVING SAFETY
THROUGH DIVERSITY



### Monitoring and Enforcement

1) Regulatory Requirements

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2) Strategies for Implementation

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3) Self-Assessment

### Regulatory Requirements

- 49 CFR 26.37:
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### Regulatory Requirements

- 49 CFR 26.37:
- (a) Implement Appropriate Mechanisms to Ensure Compliance by All Program Participants
- (b) Ensure Work Committed to DBEs is <u>Performed</u> by DBEs as indicated in LOI
- (c) Running Tally of DBE Participation

## Create Written Policies and Procedures for Contract and Worksite Reviews

- Create a document certifying that DBE contracts and worksites are inspected
- Document must detail exactly what was reviewed, by whom, and when
- Airport staff, like Concessions Managers and Construction Managers, are ideal staff to help conduct and process written certification reviews

#### Prompt Payment Mechanisms

Create Written Policies and Procedures as Appropriate

Prompt Payment & Retainage Verification
 Process

Create Written Policies and Procedures as Appropriate
The Termination Process

- Process for terminating DBE subcontracts must be clearly defined in the airport's DBE Program AND within each DBE/ACDBE subcontract.
- Prime must notify the airport and DBE/ACDBE of request to terminate and allow 5 days for the firm to respond to allegations, if desired.

#### Identify Appropriate Enforcement Mechanisms

- Progressive discipline policy
  - Breach of Contract Remedies



#### Identify Appropriate Enforcement Mechanisms

- Progressive discipline policy
  - Reporting DBE Fraud



- What does the contract say?
- Ensure Prime and DBE contracts clearly define enforcement procedures.



- What does the contract say?
- Withhold progress payments, but realize it may cause payments to DBE firms to be withheld



- What does the contract say?
- Terminate contract, as a last resort



- What does the contract say?
- Internal prequalification process remedies: e.g., debarment



<u>Enforcement Actions</u> – Contractors – 49 CFR §26.107

- Involve OIG
- Suspension / Debarment
  - ☐ False Representation as DBE
    - □Creating a front
    - ☐ Using DBE that does not work
  - □Attempt to use <u>ineligible</u> firm
  - □Over-reporting



#### Regulatory Requirements: Ensure DBE's Performance of Contracts

#### Written Certification of Contract Review

- Contract Review Process
  - DBE Subcontract Review



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# Written Certification of Work-Site Monitoring

- Site Visit reports / forms
- Follow-up reports (If required)



#### Regulatory Requirements: Ensure DBE's Performance of Contracts

#### Project Oversight is a **Team Effort!**

- Involve <u>Project Inspectors</u> and <u>Project Engineers</u>
- Create DBE Oversight as
   essential job function of multiple
   parties



#### Regulatory Requirements: Running Tally of DBE Participation



• Ensure Prime is Meeting DBE Commitment

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- Track DBE <u>Awards</u> and Commitments

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- Ensure Prime is Meeting DBE Commitment
- Track DBE <u>Awards</u> and <u>Commitments</u>
- Track <u>Payments</u> made to DBEs

#### Strategies for Implementation

#### **Complaint Investigations**

■ **Specific Allegations** of Non-compliance

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Specific Allegations of Non-compliance

#### Compliance Reviews

Overall Assessment of DBE Program Implementation

#### Strategies for Implementation

#### Complaint Investigations

Specific Allegations of Non-compliance

#### Compliance Reviews

Overall Assessment of DBE Program Implementation

#### **Enforcement Actions**

- Conciliation Agreement
- Finding of Non-Compliance
- Restrict Drawdowns of Funds
- Inability to Start, Continue, or Complete DOT-assisted Projects

#### Self-Assessment

- How are you reviewing initial participation plans and letters of intent (commitments)?
- How are you currently monitoring contracts and worksites to ensure they match commitments?
- How do you track and compare commitments and payments?
- How often do you monitor?
- What are your enforcement provisions?

### Questions?



#### Thank You!

